IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1353 of 2007

Swathi .. Petitioner

Vs

1. The Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus calling for the records setting aside the detention order passed by the Second Respondent BDFGISSV.NO.288/07 dated 03.07.2007 and directing the second respondent to produce the body of petitioner's husband viz., Dinesh @ Dhinesh kumar @ Arun @ Arun Kumar S/O. Kaliyaperumal @ Sivakumar now confined in Central Prison, Puzhal,Chennai.

For Petitioner : Mr.P.Murugesan
For Respondents: Mr.P.Kumaresan
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Dhina @ Dhineshkumar @ Arun @ Arunkumar, son of Kaliyaperumal @ Sivakumar, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers,

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Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against the detenu by the second respondent in Memo No.288/BDFGISSV/ 2007, dated 3.7.2007, set aside the same and to direct the respondents to produce the body of the detenu, now detained at Central Prison, Chennai before this Court and to set him at liberty.

3.1. The order of detention dated 3.7.2007 was passed on the basis of ground case in Crime No.562 of 2007 for alleged commission of offences under Sections 341, 336, 392 and 506(ii) IPC, complaint of which was lodged by one Sugumar. According to the complainant, on 19.6.2007, while he was proceeding to purchase simcard for his cell phone at the junction of West MGR Nagar and RK Nagar, the detenu herein and his associate Settu @ Gunasekaran came to the junction in a motor cycle. Suddenly, Settu @ Gunasekaran snatched the cell phone of the complainant. The detenu, who was sitting in the motor cycle, wrongfully restrained the complainant and snatched his money purse with a cash of Rs.350/-. When the complainant raised hue and cry, the detenu and his associate tried to escape from the spot. On hearing the hue and cry of the complainant, the public at the spot came for his rescue. On seeing the public, the detenu and his associate left the motor cycle on the road and picked up stones from the road side and pelted the same against them. The stones fell on the road side and scattered all over the road. At that time, Settu @ Gunasekaran threatened the public by brandishing knife and by uttering filthy words. The public apprehending danger to their lives ran for safety, shop vendors closed the shops and the entire traffic came to standstill causing insecurity in the minds of the public. At that time, the police personnel attached to J6 Thiruvanmiyur Police Station, who were on rounds, came to the spot and apprehended the detenu and his associate with the help of public and retrieved the knife and other items. Based on the complaint given by the complainant, a case, as stated above, was registered.

3.2. The second respondent, taking note of the above case as a ground case and finding that there are eight adverse cases pending against the detenu in Crime No.418/2007 on the file of R9 Valasaravakkam Police Station, Crime Nos.102, 232, 255, 408 and 413/2007 on the file of J6 Thiruvanmiyur Police Station, Crime No.900/2007 on the file of S8 Adambakkam Police Station and Crime No.551/2007 on the file of Tindivanam Police Station, for the offence punishable under Section 379 I.P.C. and having satisfied that there is

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a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention branding him as a Goonda.

4. The learned counsel for the petitioner placing reliance on the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], contends that the said eight adverse cases relate to the offence punishable under Section 379 I.P.C., and therefore, the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention and hence, the impugned order of detention suffers on the ground of non-application of mind on the part of the detaining authority.

5. We have heard learned Additional Public Prosecutor on the above said point.

6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982.

7.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us

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(P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Section 379, IPC and the ground case relates to the offence of robbery punishable under Section 392 IPC and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention, Accordingly, the order of detention dated 3.7.2007 is set aside and the Habeas Corpus Petition is allowed. The detenu Deena @ Dinesh @ Arun @ Arun Kumar is directed to be released forthwith, unless he is required in any other case.

ATR

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai.

3. The Superintendent
   Central Prison, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Govt,
   Public (Law & Order) Department,
   Fort St George, Chennai-9.

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